

## **REMARKS**

In the Office Action dated February 24, 2006, claims 1-7 were rejected on the basis of non-statutory obviousness-type double patenting, as being unpatentable over claims 1 and 18 of United States Patent No. 6,761,166 (Ahlmen et al.). The Examiner also stated "Method claims are also considered obvious over claims 1 and 18. This rejection is respectfully traversed for the following reasons. The subject matter disclosed and claimed in the present application is concerned with optimizing an aspiration time and an aspirating flow with regard to aspiration of an existing dead space. In accordance with the subject matter of independent claims 1 and 7 of the present application, the aspiration time and the aspirating flow are optimized for the given dead space, whatever the size or volume of that given dead space happens to be. In the subject matter disclosed and claimed in the present application, the dead space itself remains unaffected and unchanged; only the aforementioned aspiration time and aspirating flow are optimized.

By contrast, claims 1 and 18 of the Ahlmen et al. patent concern a device for reducing dead space in a ventilator system, and a ventilator system embodying such a device. In claims 1 and 18 of the Ahlmen et al. reference, the dead space itself is reduced.

The Examiner has correlated a number of items in apparatus claim 7 of the present application with claims 1 and 8 of the Ahlmen et al. patent, however, there are significant differences in the remaining claim language in each of claims 1 and 18 of the Ahlmen et al. patent, and claim 7 of the present application, that make clear that two structurally different, and functionally different, apparatuses are being claimed. As noted above, the claims of the present application proceed from a given

dead space, whereas claims 1 and 18 of the Ahlmen et al. patent are concerned with reducing a dead space.

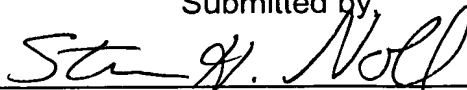
Additionally, in the Ahlmen et al. patent, as described at column 2, lines 18-21, evacuation of the dead space is performed during the end phase of expiration, or during a pause following expiration. By contrast, in the present application, as stated in the last paragraph on page 3, instead of performing the aspiration during a pause at the end of the expiration, the aspiration is optimized during the expiration such that the normal flow profile of the expiration is unaltered. Each of independent claims of the present application explicitly states that the dead space is allowed to be aspirated during ongoing expiration with a minimum of interference to flow balance in the expiration flow. This is contrary to the structure and manner of operation of claims 1 and 18 of the Ahlmen et al. patent.

Withdrawal of the obviousness-type double patenting rejection is therefore respectfully requested.

Editorial changes have been made in claim 1 to correct a typographical error therein, and to make claim 1 more consistent with the language of claim 7.

Since no prior art was applied against claims 1-7, those claims are submitted to be in condition for allowance, and early reconsideration of the application is respectfully requested.

Submitted by,



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SCHIFF, HARDIN LLP, **CUSTOMER NO. 26574**  
Patent Department, 6600 Sears Tower  
233 South Wacker Drive, Chicago, Illinois 60606  
Telephone: 312/258-5790  
Attorneys for Applicants.